

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION

5 IN RE: HIGH-TECH EMPLOYEE
6 ANTITRUST LITIGATION,) C-11-02509 LHK
7) SAN JOSE, CALIFORNIA
8 THIS DOCUMENT RELATES TO:) AUGUST 8, 2013
9 ALL ACTIONS) PAGES 1-161
10

11 TRANSCRIPT OF PROCEEDINGS
12 BEFORE THE HONORABLE LUCY H. KOH
13 UNITED STATES DISTRICT JUDGE

14 A P P E A R A N C E S :

15 FOR THE PLAINTIFFS: JOSEPH SAVERI LAW FIRM
16 BY: JOSEPH SAVERI
17 LISA J. LEEBOVE
18 JAMES G. DALLAL
19 255 CALIFORNIA STREET, SUITE 450
20 SAN FRANCISCO, CALIFORNIA 94111
21 LIEFF, CABRASER,
22 HEIMMANN & BERNSTEIN
23 BY: KELLY M. DERMODY
24 BRENDAN P. GLACKIN
25 DEAN M. HARVEY
ANNE B. SHAVER
LISA J. CISNEROS
275 BATTERY STREET, 30TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111

22 APPEARANCES CONTINUED ON NEXT PAGE

23 OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
24 CERTIFICATE NUMBER 9595

25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

UNITED STATES COURT REPORTERS

1 APPEARANCES (CONTINUED)

2 FOR DEFENDANT KEKER & VAN NEST
3 GOOGLE: BY: ROBERT A. VAN NEST
4 DANIEL E. PURCELL
5 JUSTINA K SESSIONS
6 633 BATTERY STREET
7 SAN FRANCISCO, CALIFORNIA 94111
8 MAYER BROWN
9 BY: LEE H. RUBIN
10 TWO PALO ALTO SQUARE, SUITE 300
11 PALO ALTO, CALIFORNIA 94306

12 FOR DEFENDANT O'MELVENY & MYERS
13 APPLE: BY: GEORGE A. RILEY
14 MICHAEL F. TUBACH
15 CHRISTINA J. BROWN
16 TWO EMBARCADERO CENTER
17 28TH FLOOR
18 SAN FRANCISCO, CALIFORNIA 94111
19 FOR DEFENDANT JONES DAY
20 ADOBE AND BY: DAVID C. KIERNAN
21 INTUIT: LIN W. KAHN
22 CRAIG E. STEWART
23 555 CALIFORNIA STREET, 26TH FLOOR
24 SAN FRANCISCO, CALIFORNIA 94104
25 FOR DEFENDANT BINGHAM MCCUTCHEON
INTEL: BY: DONN P. PICKETT
FRANK HINMAN
SUJAL SHAH
THREE EMBARCADERO CENTER
SAN FRANCISCO, CALIFORNIA 94111

19 FOR DEFENDANT COVINGTON & BURLING
20 PIXAR: BY: EMILY J. HENN
333 TWIN DOLPHIN DRIVE, SUITE 700
REDWOOD SHORES, CALIFORNIA 94065

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1 SAN JOSE, CALIFORNIA AUGUST 8, 2013
2 P R O C E E D I N G S
3 (COURT CONVENED AND THE FOLLOWING PROCEEDINGS WERE HELD:)
4 THE CLERK: CALLING CASE NUMBER C-11-02509 LHK, IN
5 RE: HIGH-TECH EMPLOYEE ANTITRUST LITIGATION.
6 MR. GLACKIN: BRENDAN GLACKIN, LEIFF, CABRASER,
7 HEIMMANN & BERNSTEIN ON BEHALF OF THE PLAINTIFFS.
8 MS. DERMODY: GOOD AFTERNOON, YOUR HONOR.
9 KELLY DERMODY, LEIF, CABRASER. AND THE OTHER LEIF, CABRASER
10 PEOPLE WITH US ARE MY PARTNER, DEAN HARVEY, AND ASSOCIATES
11 ANNE SHAVER AND LISA CISNEROS.
12 AND ALSO IN THE COURTROOM TODAY ARE NAMED PLAINTIFFS,
13 BRANDON MARSHAL AND MIKE DEVINE.
14 THE COURT: OKAY.
15 MR. SAVERI: GOOD AFTERNOON, YOUR HONOR.
16 JOSEPH SAVERI. WITH ME FROM MY OFFICE ARE LISA LEELOVE AND
17 JAMES DALLAL.
18 THE COURT: OKAY.
19 MR. VAN NEST: GOOD AFTERNOON, YOUR HONOR.
20 BOB VAN NEST FROM KEKER & VAN NEST FOR GOOGLE. I'M HERE WITH
21 DAN PURCELL AND TINA SESSIONS.
22 ALSO, LEE RUBIN FROM MAYER BROWN.
23 AND I'VE BEEN ASKED TO SPEAK ON BEHALF OF ALL DEFENDANTS
24 THIS AFTERNOON.
25 MR. RILEY: GOOD AFTERNOON, YOUR HONOR. GEORGE RILEY
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01:48PM 1 OF O'MELVENY & MYERS FOR APPLE. I'M JOINED BY MY COLLEAGUES
01:49PM 2 CHRISTINA BROWN AND MICHAEL TUBACH.
01:49PM 3 THE COURT: OKAY. GOOD AFTERNOON.
01:49PM 4 MR. PICKETT: GOOD AFTERNOON. DONN PICKETT. I'M
01:49PM 5 HERE ALONG WITH FRANK HINMAN AND SUJAL SHAH FOR INTEL.
01:49PM 6 THE COURT: OKAY. GOOD AFTERNOON.
01:49PM 7 MR. KIERNAN: GOOD AFTERNOON, YOUR HONOR.
01:49PM 8 DAVID KIERNAN OF JONES DAY ON BEHALF OF ADOBE. HERE WITH ME
01:49PM 9 TODAY IS LIN KAHN. BOB MITTELSTAEDT COULDN'T BE HERE TODAY
01:49PM 10 BECAUSE OF TRIAL ON ANOTHER MATTER.
01:49PM 11 THE COURT: OKAY. MR. KIERNAN AND? I'M SORRY.
01:49PM 12 MR. KIERNAN: AND LIN KAHN.
01:49PM 13 THE COURT: OKAY. THANK YOU.
01:49PM 14 OKAY. AND THERE'S NO ONE HERE FOR LUCASFILM, PIXAR, AND
01:49PM 15 INTUIT; CORRECT?
01:49PM 16 MS. HENN: YOUR HONOR, EMILY HENN, COVINGTON &
01:49PM 17 BURLING. I'M HERE FOR THE CMC FOR PIXAR.
01:49PM 18 THE COURT: OKAY. WOULD YOU MIND IF WE DID THAT AT
01:49PM 19 THE END, OR WOULD YOU LIKE TO DO THAT AT THE BEGINNING? IS
01:49PM 20 THAT OKAY IF IT'S AT THE END?
01:49PM 21 MS. HENN: YES.
01:49PM 22 MR. STEWART: YOUR HONOR, CRAIG STEWART. I'M HERE ON
01:50PM 23 BEHALF OF INTUIT.
01:50PM 24 THE COURT: OKAY. ALL RIGHT. WELL, GOOD AFTERNOON
01:50PM 25 TO EVERYONE.

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02:03PM 1 INTUIT? DO WE STILL NEED TO -- I KNOW BOTH SIDES BELIEVE THAT
 02:03PM 2 THERE'S NO IMPACT FROM THE THREE DEFENDANTS SETTLING, BUT TELL
 02:03PM 3 ME WHAT IS THERE, IF ANY, IMPACT ON WHETHER WE STILL LOOK AT
 02:03PM 4 THE DEPOSITION TESTIMONY AND THE EVIDENCE OF THOSE THREE
 02:03PM 5 COMPANIES AS PART OF THE ANALYSIS IN THIS MOTION.

02:03PM 6 MR. VAN NEST: I THINK, YOUR HONOR --

02:03PM 7 THE COURT: WHAT DO WE DO WITH THAT?

02:03PM 8 MR. VAN NEST: I THINK THEY ESSENTIALLY DROP OUT.

02:03PM 9 BUT THEY'RE A SMALL PART OF THE GROUP. I MEAN, THE THREE
 02:03PM 10 TOGETHER EMPLOY LESS THAN 8 PERCENT OF THE EMPLOYEES IN THE
 02:03PM 11 PROPOSED CLASS.

02:04PM 12 SO I THINK THE REAL FOCUS NOW IS ON THE REMAINING
 02:04PM 13 DEFENDANTS AND THE -- AND WHATEVER AGREEMENTS THEY'RE ABLE TO
 02:04PM 14 PROVE AS BETWEEN AND AMONG THEM.

02:04PM 15 BUT EITHER WAY, I THINK BOTH OF US SAID IN THE STATUS
 02:04PM 16 CONFERENCE STATEMENTS, THE SETTLEMENTS DON'T CHANGE ANYTHING,
 02:04PM 17 IN PART BECAUSE THE THREE SETTLING DEFENDANTS WERE A VERY SMALL
 02:04PM 18 PART OF THIS TO BEGIN WITH. AS I SAID, LESS THAN 8 PERCENT OF
 02:04PM 19 CLASS MEMBERS ARE EMPLOYED BY ALL THREE COMBINED.

02:04PM 20 SO THE LARGEST PART OF THE CASE IS STILL BEFORE YOUR HONOR
 02:04PM 21 AND THE CONDUCT THAT I THINK YOU'LL BE FOCUSING ON IS THE
 02:04PM 22 CONDUCT OF THE FOUR REMAINING DEFENDANTS, NOT THOSE THAT HAVE
 02:04PM 23 SETTLED OUT.

02:04PM 24 THE COURT: BUT WHY WOULDN'T THE COMMENTS OF

02:04PM 25 MR. CATMULL AND MR. LUCAS STILL BE RELEVANT TO --

UNITED STATES COURT REPORTERS

02:05PM 1 SETTLING DEFENDANTS WITH RESPECT TO THE AGREEMENTS, THE NATURE
 02:05PM 2 AND THE SCOPE OF THE AGREEMENTS, IS STILL GOING TO BE RELEVANT
 02:05PM 3 IN THIS CASE.
 02:05PM 4 AND TO THE EXTENT THAT THERE IS OTHER EVIDENCE THAT HAS TO
 02:06PM 5 DO WITH THE BUSINESS PRACTICES OF THOSE COMPANIES THAT WE RELY
 02:06PM 6 ON TO SHOW A CLASS-WIDE IMPACT, THE FACT THAT THOSE DEFENDANTS
 02:06PM 7 HAVE SETTLED DOESN'T CHANGE THAT FACT.
 02:06PM 8 REMEMBER THAT THIS REMAINS A, AN ANTITRUST CLAIM AND ALL
 02:06PM 9 THE PARTICIPANTS IN THE CONSPIRACY ARE, AS A MATTER OF LAW,
 02:06PM 10 JOINTLY AND SEVERALLY LIABLE.
 02:06PM 11 AND SO TO THE EXTENT THAT WE PROVE AN UNDERSTANDING, A
 02:06PM 12 COMMON COURSE OF CONDUCT THAT INVOLVES ALL OF THESE COMPANIES,
 02:06PM 13 I MEAN, THAT EVIDENCE IS RELEVANT.
 02:06PM 14 THE COURT: WHAT IS THE BREAKDOWN OF THE, WHAT IS IT,
 02:06PM 15 60,000 THAT YOU'RE ALLEGING ARE IN YOUR TECHNICAL EMPLOYEE
 02:06PM 16 CLASS? WHAT'S THE BREAKDOWN AMONGST THE VARIOUS DEFENDANTS,
 02:06PM 17 INCLUDING THE ONES WHO ARE NOW OUT OF THE CASE?
 02:06PM 18 MR. GLACKIN: WOULD YOU LIKE TO KNOW THE BREAKDOWN ON
 02:06PM 19 NUMBER OF CLASS MEMBERS OR -- WELL, I CAN TELL YOU WHERE THAT
 02:06PM 20 INFORMATION IS IN THE RECORD ACTUALLY IF THAT WOULD BE HELPFUL.
 02:07PM 21 THE COURT: OKAY. THAT'S FINE.
 02:07PM 22 MR. GLACKIN: IF YOU GO TO THE OCTOBER 12, 2012
 02:07PM 23 REPORT OF DR. LEAMER AND YOU GO TO PAGE 23, WHICH IS BETWEEN
 02:07PM 24 PARAGRAPHS 54 AND 55, THERE ARE TWO TABLES THERE THAT -- ONE OF
 02:07PM 25 THEM IS FOR THE ALL SALARIED CLASS AND ONE OF THEM IS FOR THE

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02:04PM 1 MR. VAN NEST: THEY MIGHT HAVE SOME --
 02:04PM 2 THE COURT: -- THE ANTITRUST CONSPIRACY, HOW THE
 02:04PM 3 AGREEMENTS WERE ENFORCED, HOW THEY WERE IMPLEMENTED?
 02:04PM 4 MR. VAN NEST: THEY MIGHT HAVE SOME LIMITED
 02:04PM 5 RELEVANCE, YOUR HONOR.
 02:04PM 6 BUT ESSENTIALLY YOU'RE LOOKING NOW -- BECAUSE THE NATURE OF
 02:04PM 7 THE AGREEMENTS THAT THEY'VE ALLEGED ARE BILATERAL BETWEEN AND
 02:04PM 8 AMONG INDIVIDUAL PAIRS OF DEFENDANTS, I THINK THAT EVIDENCE IS
 02:05PM 9 GOING TO BE LARGELY RELEVANT BECAUSE THE FOCUS WILL BE ON WHAT,
 02:05PM 10 IF ANY, IMPACT WAS THERE FROM THE BILATERAL AGREEMENTS THAT ARE
 02:05PM 11 BEING LITIGATED NOW AS BETWEEN THE OTHER FOUR REMAINING
 02:05PM 12 DEFENDANTS.
 02:05PM 13 SO, AGAIN, I DON'T WANT TO SAY ABSOLUTELY NO RELEVANCE, BUT
 02:05PM 14 VERY LIMITED.

02:05PM 15 THE COURT: OKAY.

02:05PM 16 MR. SAVERI: YOUR HONOR --

02:05PM 17 THE COURT: LET ME HEAR FROM THE PLAINTIFFS. YOU
 02:05PM 18 AGREE THAT YOU'RE NOT ADVOCATING AN OVERARCHING CONSPIRACY
 02:05PM 19 ANYMORE, IT'S JUST BILATERAL AGREEMENTS AND --
 02:05PM 20 MR. SAVERI: NO, YOUR HONOR. I DON'T THINK THAT THE
 02:05PM 21 FACT THAT WE'VE -- THAT WE'VE -- NOTHING HAS REALLY CHANGED IN
 02:05PM 22 TERMS OF OUR THEORY OF THE CASE. WE ALLEGE -- AND MR. GLACKIN
 02:05PM 23 IS GOING TO HANDLE THE SUBSTANCE OF THE ARGUMENT, BUT LET ME
 02:05PM 24 JUST SAY THIS.
 02:05PM 25 I THINK THAT THE -- AS YOU SAID, THE EVIDENCE OF THE

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02:07PM 1 TECHNICAL CLASS, WHICH IS THE SAME CLASS THAT WE'RE NOW SEEKING
 02:07PM 2 TO CERTIFY.
 02:07PM 3 THE COURT: WHICH REPORT? I HAVE THE MAY 10TH,
 02:07PM 4 2013 --
 02:07PM 5 MR. GLACKIN: THIS IS LAST YEAR.
 02:07PM 6 THE COURT: -- AND JULY 12TH.
 02:07PM 7 OH, I DON'T HAVE THAT.
 02:07PM 8 MR. GLACKIN: RIGHT. BUT IF YOU WERE TO -- I'D BE
 02:07PM 9 HAPPY TO HAND YOU MY PAGE IF IT'S HELPFUL. I SHOWED THIS TO
 02:07PM 10 MR. VAN NEST.
 02:07PM 11 THE COURT: CAN YOU JUST GIVE ME THE BENCHMARKS?
 02:07PM 12 MR. GLACKIN: SURE. WELL, BY NUMBER OF EMPLOYEES, I
 02:07PM 13 CAN TELL YOU THAT ADOBE IS 3,601; APPLE IS 6,835.
 02:07PM 14 THE COURT: 6,000 WHAT?
 02:07PM 15 MR. GLACKIN: 835.
 02:07PM 16 THE COURT: OKAY. THANK YOU.
 02:07PM 17 MR. GLACKIN: GOOGLE IS 7,854.
 02:07PM 18 THE COURT: OKAY.
 02:07PM 19 MR. GLACKIN: INTEL IS 36,643.
 02:07PM 20 THE COURT: OKAY.
 02:07PM 21 MR. GLACKIN: INTUIT IS 3,236.
 02:08PM 22 THE COURT: OKAY.
 02:08PM 23 MR. GLACKIN: LUCAS IS 522; PIXAR IS 859.
 02:08PM 24 THE COURT: ALL RIGHT. WHAT ABOUT THE -- HOW MANY
 02:08PM 25 JOBS -- WELL, I GUESS THAT'S IN THE CHART THAT YOU PROVIDED,

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05:31PM 1 LET'S SAY NO AND GET ON TO A MORE REASONABLE WAY OF DOING
05:31PM 2 THIS AND FIGURE OUT A BETTER WAY TO RESOLVE THESE CLAIMS.
05:31PM 3 THANKS FOR YOUR ATTENTION, YOUR HONOR.
05:31PM 4 THE COURT: ALL RIGHT. WELL, THANK YOU ALL VERY
05:31PM 5 MUCH. I REALLY APPRECIATE IT. THANKS FOR YOUR PATIENCE TODAY.
05:31PM 6 MR. GLACKIN: THANK YOU, YOUR HONOR.
05:31PM 7 MR. VAN NEST: THANK YOU, YOUR HONOR.
05:31PM 8 (THE PROCEEDINGS IN THIS MATTER WERE CONCLUDED.)
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UNITED STATES COURT REPORTERS

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3 CERTIFICATE OF REPORTER
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7 I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED
8 STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA,
9 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
10 CERTIFY:
11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
12 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
13 ABOVE-ENTITLED MATTER.

14
15
16 LEE-ANNE SHORTRIDGE, CSR, CRR
17 CERTIFICATE NUMBER 9595
18 DATED: AUGUST 19, 2013
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